



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

February 11, 1952

Hon. Austin F. Anderson
Criminal District Attorney
San Antonio 5, Texas

Opinion No. V-1403

Re: Effect of adoption of the
Optional County Road Law of
1947 upon the County Engineer

Dear Sir:

You have requested an opinion on the following question:

"Was the office of County Engineer abolished by
the adoption of the Optional County Road Law of 1947
and the appointment of a County Road Engineer?"

You state in your request that on November 13, 1951,
the electorate of Bexar County adopted the provisions of Article
6716-1, V.C.S. (The Optional County Road Law of 1947), and pur-
suant to its provisions the *commissioners'* court employed a "Coun-
ty Road Engineer".

The Bexar County Road Law (S.B. 575, Acts 42nd Leg.,
R.S. 1931, special laws, ch. 137, p. 259) provides for the em-
ployment of a "County Engineer" by the *commissioners'* court of
Bexar County. It prescribes his qualifications and duties, and
determines his salary. Article 6716-1, V.C.S., provides for the
employment of a "County Road Engineer" by the *commissioners'*
court, but prescribes different qualifications, salary, and du-
ties than that required of the "County Engineer" under the Bexar
County Road Law, although both have substantially the same powers.

In this connection Section 11 of Article 6716-1, V.C.S.,
provides:

"Sec. 11. The County Road Engineer shall attend
all meetings of the Commissioners Court when it sits
to consider county road matters, with the right to par-
ticipate in the discussions and to make recommendations.
He shall see that the policies of the Commissioners
Court relating to county roads are faithfully executed,
supervise the administration of the county road depart-
ment, and prepare detailed annual budget estimates for
the construction and maintenance of the county roads
and the operation of the county road department. The
County Road Engineer shall prepare estimates and speci-
fications for all equipment, materials, supplies, and
labor necessary for the construction and maintenance

of the county roads and the operation of the county road department, serve as custodian for all equipment, materials, and supplies belonging to the county road department, prepare plans and specifications for all county road construction and maintenance, maintain cost accounting records on county road department expenditures, keep a perpetual inventory of all county road department equipment, material and supplies, and perform such other duties as the Commissioners Court may require which are consistent with this Act."

Senate Bill 575 (The Bexar County Road Law), on the other hand, insofar as it concerns the duties of the "County Engineer" provides:

"Sec. 6. . . . Such engineer by and with the authority of the Commissioners' Court and subject to its directions, shall have the power to employ assistants to aid him in the discharge of his duties. . . .

"Sec. 13. . . . The Commissioners' Court in laying out and constructing new roads or providing for their maintenance, extension or repair, shall in advance of the work, call on the County Engineer or Consulting Engineer for estimates as to the cost involved in the improvements, and the probable amount of traffic in tonnage the proposed highways will care for, and the report of such engineer shall be filed in writing and become a part of the records of the Court. . . .

"Sec. 14. Before actual construction shall have begun on any road or highway so to be improved, the County Engineer, or Consulting Engineer, under the direction of the Commissioners' Court, shall make careful and accurate surveys of the roads and highways to be improved, and file with the records of the Court plans and specifications and estimates as to the cost thereof. . . . "

The conflict between these statutes, as they apply to the situation about which you ask, is clear. Article 6716-1, V.C.S., contains no clause expressly repealing any of the provisions of Senate Bill 575. Article 6716-1 was enacted by the Legislature in 1947 but became effective in Bexar County when it was adopted at a special election on November 13, 1951. Senate Bill 575 was enacted in 1931 as a special law applying only to Bexar County. Although an act contains no repealing clause, a new enactment abrogates any former act on the same subject insofar as there is a clear inconsistency between the two acts. This rule of statutory construction is based upon the principle that

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the latest expression of the Legislature will be given effect.
Popham v. Patterson, 121 Tex. 615, 51 S.W.2d 680 (1932); Townsend v. Terrell, 118 Tex. 463, 16 S.W.2d 1063 (1929).

Applying these rules to the fact situation which you present, we agree with your conclusion that Article 6716-1, V.C.S., being the later of the two statutes involved and being in conflict with Senate Bill 575, will control and abolish the office of County Engineer established by the conflicting provisions of the earlier statute.

SUMMARY

The position of "County Engineer" under the provisions of the Bexar County Road Law (S.B. 575, Acts of the 42nd Leg., R.S. 1931, special laws, ch. 137, p. 259) was abolished by the adoption of the optional County Road Law of 1947 (Article 6716-1, V.C.S.) by the electorate of Bexar County. This later enactment (Optional County Road Law of 1947) provides for the employment of a "County Road Engineer" by the Commissioners' Court and prescribes his duties and qualifications.

Yours very truly,

PRICE DANIEL
Attorney General

APPROVED:

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JR:mh